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March 15, 2006

VIA E-MAIL and FIRST CLASS MAIL

Amy D. Brody, Esq.
Rakoczy Molino Mazzochi Siwik LLP
6 West Hubbard Street, Suite 500
Chicago, IL 60610

Re: In re: '318 Patent Infringement Litigation; Civil Action No. 05-356-KAJ (consolidated)

Dear Amy:

This is in response to your telephone call from yesterday afternoon and in partial response to your letter dated March 7 concerning Plaintiffs' February 21, 2006 Rule 30(b)(6) Deposition Notices of Mylan, seeking testimony on March 15-17. As I stated to you on the phone, Plaintiffs are willing to accommodate Mylan's request to re-set the deposition for another date. While you did not know what dates Mylan would make its designees available nor did you know when you expected to get back to me, we must insist that the Rule 30(b)(6) depositions take place by the end of March if the current discovery schedule is to remain on track.

As you know, many of the noticed topics concern subjects that will lead to the discovery of admissible evidence, such as the content and location of relevant documents and the identities of persons with knowledge of relevant facts, and so the deposition must occur soon to provide Plaintiffs with sufficient time to conduct additional discovery. Accordingly, we request that you let us know by no later than Friday, March 17 when in March Plaintiffs can conduct the deposition.

As to your statement that Plaintiffs must re-issue the deposition notice due to unspecified "improper topics," we see no reason to do so (nor have we received the formal objections you promised to provide). In light of the Court's March 3 Order, however, Plaintiffs hereby withdraw their request for deposition testimony on the following topics:

- For the Notice scheduling testimony for March 15: Topic No. 1 (only to the extent it relates to alleged noninfringement);
- For the Notice scheduling testimony for March 16: none; and
- For the Notice scheduling testimony for March 17: Topic Nos. 3-5, 6 (to the extent related to Topic Nos. 3-5), and 7 (to the extent related to Topic Nos. 3-5).

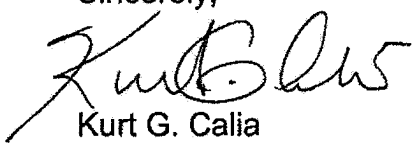
If you believe that any of the remaining noticed topics are improper, please identify them and the basis for that belief when you respond later this week.

We therefore request that Mylan confirm by Friday that the depositions will go forward in March on the topics delineated in this letter. If not, we further request that you let us know at what time Friday we can conduct a telephonic meet-and-confer session to resolve these disputes or join them for resolution by the Court. If disputes remain after Friday, we will seek assistance from the Court.

Plaintiffs will respond to the remaining issues in your letter (namely, Mylan's claim that it has fully complied with its document production obligations in this case – which we believe is demonstrably incorrect) under separate cover.

We look forward to your prompt response.

Sincerely,



Kurt G. Calia

cc: All defense counsel (via email; see attached service list)
Steven Balick, Esq. (via email)

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March 22, 2006

VIA E-MAIL and FIRST CLASS MAIL

Defense Counsel
Attached Service List

Re: In re: '318 Patent Infringement Litigation; Civil Action No. 05-356-KAJ (consolidated)

Dear Counsel:

This letter concerns Plaintiffs' February 21, 2006 R. 30(b)(6) deposition notices which have been the subject of recent correspondence with each of the defendants.

First, we note that none of the defendants agreed to the noticed deposition dates (or was available to discuss this dispute last week). This is simply unacceptable and is at odds with Judge Jordan's request that the parties "go the extra mile" to make sure that discovery is completed within the expedited deadlines sought and obtained by defendants. Each defendant was given at least three weeks' notice, and some of the defendants (e.g., Alphapharm) received more than two months' notice. Yet each defendant rejected the noticed dates and promised alternate dates. Not only have no alternate dates been provided, but no defendant has explained why the noticed dates are not acceptable in the first place. That some of the topics may be objectionable does not justify a refusal to timely present any witness on topics to which objections have not been lodged.

As I stated in my prior correspondence, it is critical to the viability of the current discovery schedule that these depositions begin in March. Plaintiffs noticed these depositions in February after documents began to arrive from defendants, and we noticed them to occur over a period of several weeks, arranging them on the basis of the volume of documents produced by each defendant. As I also stated in my earlier letters, many of the noticed topics pertain to subjects that will lead to the discovery of admissible evidence, such as the content and location of relevant documents and the identities of relevant witnesses. To be clear, if these depositions do not begin this month, we will seek relief from the Court.

And, to respond to the specific statement in Lynn Ulrich's March 16 letter on behalf of Barr, it is not acceptable to refuse to produce a witness (without explanation) and state that witnesses will be made available on later noticed dates rejected by other defendants. That strategy leaves open the prospect that no defendant will present a witness until the last of the noticed dates in the end of April – more than two months after the notices were served and less than two months before the end of discovery.

We have received formal objections from the defendants and are prepared to discuss them in a meet-and-confer telephone conference, which we propose for Thursday, March 23, 4:00 PM EST.[1] Please confirm that this time is acceptable and I will circulate a dial-in number. It is our continued hope that we can resolve the disputes concerning the scope of these depositions and begin them this month. If we cannot achieve this result on Thursday, we will be seeking a discovery hearing with Judge Jordan early next week.

If you have any questions or concerns, please do not hesitate to contact me. We look forward to your prompt response.

Sincerely,

Kurt G. Calia

cc: Steven Balick, Esq. (via email only)

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[1] As to the request by Amy Brody, counsel for Mylan, that the parties also conduct a meet-and-confer session regarding Mylan's concerns with Plaintiff's document production, we do not agree to do so. First of all, Plaintiffs" R. 30(b)(6) deposition notices have been outstanding for a month and the depositions were to begin last week, and so the need to resolve them is more acute. Secondly, we have not yet had a chance to formulate a response to Mylan's March 7 and March 16 letters, which will require us to confer with our client about the existence, scope, and location of the disputed documents -- a more onerous inquiry than the decision of whether a witness will be provided on a deposition notice that has been outstanding for a month. We will respond to those letters later this week, and should any disputes remain, schedule a meet-and-confer session to occur very shortly thereafter. But we will resist any effort to hold up resolution of the discrete issues raised by Plaintiffs' R. 30(b)(6) notices unless we agree to simultaneously try to tackle other disputes.

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March 22, 2006

VIA Facsimile and E-mail

Kurt G. Calia, Esq.
Covington & Burling
1201 Pennsylvania Avenue, NW
Washington, D.C. 20004-2401

Re: *In Re: '318 Patent Infringement Litigation*
C.A. No. 05-356 (KAJ) (D. Del.) (consolidated)

Dear Kurt:

This responds to your letter of today, in which you propose a meet and confer teleconference for Thursday, March 23, at 4:00 p.m. EST. Your request for a "prompt response" is disingenuous, where Defendants proposed to hold such call on either Tuesday or Wednesday of this week. Plaintiffs conveniently ignored that request.

Moreover, Plaintiffs' explicit refusal to hold a meet and confer on Plaintiffs' discovery deficiencies (3/22/06 Calia letter at 2 n.1) is entirely unacceptable. Defendants raised certain of these discovery issues nearly two months ago, if not longer, including Plaintiffs' failure to produce documents and written discovery concerning secondary considerations and claim construction. In light of these circumstances and Plaintiffs' notice of Defendants' discovery requests for over six (6) months, we further find it quite surprising that Plaintiffs "have not yet had a chance to formulate a response" to the discovery issues raised by Mylan and the other Defendants. Thus, for you to suggest that Plaintiffs' purported discovery issues somehow are more important or take priority over any of the legitimate issues Defendants have raised with respect to Plaintiffs' discovery is egregious. In this regard, you claim that the deposition issues Plaintiffs have raised are "more acute" than Defendants' issues. This is absurd. Without the most basic of information from Plaintiffs concerning the issues at the heart of this narrowed litigation,

Defendants are grossly hindered from further developing their case and proceeding with depositions. For months, Plaintiffs have ignored Defendants' discovery letters; dictated when meet and confer conferences will be held; unilaterally decided when and what discovery they would produce; and unilaterally imposed unreasonable deadlines on Defendants. Defendants will not tolerate this conduct. We ask that you reconsider Plaintiffs' position on holding a meet and confer on Defendants' outstanding discovery issues. If Plaintiffs still refuse to immediately proceed with such meet and confer, we will advise the Court accordingly.

That said, we will be get back with you concerning Defendants' availability for a meet and confer conference on March 23, at 4:00 p.m. EST, as proposed by Plaintiffs.

Very truly yours,

RAKOCZY MOLINO MAZZOCHI SIWIK LLP

Amy D. Brody

Amy D. Brody

cc: Attached service list

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EXHIBIT J

Calia, Kurt

From: Ulrich, Lynn MacDonald [LUlrich@winston.com]

Sent: Thursday, March 23, 2006 5:07 PM

To: Calia, Kurt; abernstein@crbcp.com; abrody@rmmslegal.com; gaza@rlf.com; wahl.barbara@arentfox.com; Franklin, Brian; csiwik@rmmslegal.com; cmanley@kirkland.com; smith.jacques@arentfox.com; edonovan@kirkland.com; cottrell@rlf.com; james.barabas@lw.com; carlan.janine@arentfox.com; jday@ashby-geddes.com; hsu.john@arentfox.com; jshaw@ycst.com; jingersoll@ycst.com; krobinson@kirkland.com; lmonroe-sampson@rmmslegal.com; mmatterer@morrisjames.com; mgupta@crbcp.com; provner@potteranderson.com; rkirk@bayardfirm.com; berman.richard@arentfox.com; robert.gunther@lw.com; sbalick@ashby-geddes.com; ssender@budd-larner.com; Gracey, Taras; wrakoczy@rmmslegal.com

Subject: RE: In re: '318 Patent Litigation

Kurt: I disagree with the rhetoric in your email. The fact is that Defendants were available for a meet and confer earlier this week and requested one to discuss Plaintiffs' discovery deficiencies. Plaintiffs ignored the request. In yet another effort to have a meet and confer with Plaintiffs, Defendants are available tomorrow at 3 pm CT. I look forward to receiving a dial-in number from you for the call.

Regards,

Lynn Ulrich

-----Original Message-----
From: Calia, Kurt [mailto:kcalia@cov.com]
Sent: Thursday, March 23, 2006 2:49 PM
To: Ulrich, Lynn MacDonald; abernstein@crbcp.com; abrody@rmmslegal.com; gaza@rlf.com; wahl.barbara@arentfox.com; Franklin, Brian; csiwik@rmmslegal.com; cmanley@kirkland.com; smith.jacques@arentfox.com; edonovan@kirkland.com; cottrell@rlf.com; james.barabas@lw.com; carlan.janine@arentfox.com; jday@ashby-geddes.com; hsu.john@arentfox.com; jshaw@ycst.com; jingersoll@ycst.com; krobinson@kirkland.com; lmonroe-sampson@rmmslegal.com; mmatterer@morrisjames.com; mgupta@crbcp.com; provner@potteranderson.com; rkirk@bayardfirm.com; berman.richard@arentfox.com; robert.gunther@lw.com; sbalick@ashby-geddes.com; ssender@budd-larner.com; Gracey, Taras; wrakoczy@rmmslegal.com
Subject: RE: In re: '318 Patent Litigation

Lynn

While you are correct that certain of the defendants indicated a willingness to hold a meet-and-confer on Tuesday or Wednesday, not all did, rendering the offer moot. Plaintiffs did not ignore the offer to conduct a conference on those dates at all, but because we agreed with the point made in your March 16 letter that all defendants be involved, we proposed a specific date and time (today at 4 PM) that we hoped would work for everyone, including the defendants that have never specified when they might be available for such a call. (Given that we asked for a call last Thursday or Friday, we have now proposed three dates.)

Please understand that we have to coordinate with 7 parties as well, and the

defendants' apparent inability to confer even with multiple suggested dates is delaying resolution of the R. 30(b)(6) notice dispute and hampering our ability to comply with the accelerated schedule. In any event, we hope to receive confirmation from you that the defendants will be available to conduct a telephone conference tomorrow to address the deposition situation. The notices were served a month ago now.

As to your request that we also be prepared to discuss Plaintiffs' alleged discovery deficiencies (not specified in your letter), we respond as follows. First, while we have received correspondence from Mylan's counsel on this subject, we have not received correspondence from other defendants since my March 10 letter outlining Plaintiffs' positions. Accordingly, we owe a response to Mylan only at this point (which we will provide by the close of business tomorrow). Second, we do not agree that discovery disputes that are ripe for resolution by meet-or-confer or a discovery hearing should be held up by other potential disputes. That approach will surely render the current schedule unworkable.

We look forward to confirmation that tomorrow will work for a call to discuss the R. 30(b)(6) deposition notices. We will respond to Mylan's letter concerning the Plaintiffs' discovery tomorrow, and we agree to schedule a call early next week should any disputes remain.

Sincerely,
Kurt G. Calia

Covington & Burling
1201 Pennsylvania Ave., N.W.
Washington, D.C. 20004-2401
202.662.5602 (v); 202.778.5602 (f)
kcalia@cov.com; www.cov.com

From: Ulrich, Lynn MacDonald [mailto:LUlrich@winston.com]
Sent: Thursday, March 23, 2006 11:48 AM
To: Calia, Kurt; abernstein@crbcp.com; abrody@rmmslegal.com; gaza@rlf.com; wahl.barbara@arentfox.com; Franklin, Brian; csiwik@rmmslegal.com; cmanley@kirkland.com; smith.jacques@arentfox.com; edonovan@kirkland.com; cottrell@rlf.com; james.barabas@lw.com; carlan.janine@arentfox.com; jday@ashby-geddes.com; hsu.john@arentfox.com; jshaw@ycst.com; jingersoll@ycst.com; krobinson@kirkland.com; lmonroe-sampson@rmmslegal.com; mmatterer@morrisjames.com; mgupta@crbcp.com; provner@potteranderson.com; rkirk@bayardfirm.com; berman.richard@arentfox.com; robert.gunther@lw.com; sbalick@ashby-geddes.com; ssender@budd-larner.com; Gracey, Taras; wrakoczy@rmmslegal.com
Subject: RE: In re: '318 Patent Litigation

Kurt: As you know, last week Defendants proposed a meet and confer for Tuesday or Wednesday of this week to discuss Plaintiffs 30(b)(6) notices and Plaintiffs' discovery deficiencies. Despite your claim that such a conference was critical, Plaintiffs ignored Defendants' offer. The first response that Plaintiffs made to Defendants' request for a meet and confer was in your letter from yesterday afternoon. Your demand that the meet and

confer take place today (less then 24-hours after your letter) is unreasonable and unworkable. As Plaintiffs should appreciate by now, Defendants have to organize schedules for counsel for 7 parties for such meet and confers. Despite Defendants' best efforts, all Defendants are not available today for a meet and confer. I will let you know later today if all defense counsel are available tomorrow. As Amy Brody stated in her letter yesterday, Defendants fully expect that Plaintiffs will be prepared to discuss Plaintiffs' discovery deficiencies during the meet and confer.

Regards,
Lynn Ulrich

-----Original Message-----
From: Calia, Kurt [mailto:kcalia@cov.com]
Sent: Thursday, March 23, 2006 9:25 AM
To: abernstein@crbcp.com; abrody@rmmslegal.com; gaza@rlf.com; wahl.barbara@arentfox.com; Franklin, Brian; csiwik@rmmslegal.com; cmanley@kirkland.com; smith.jacques@arentfox.com; edonovan@kirkland.com; cottrell@rlf.com; james.barabas@lw.com; carlan.janine@arentfox.com; jday@ashby-geddes.com; hsu.john@arentfox.com; jshaw@ycst.com; jingersoll@ycst.com; krobinson@kirkland.com; lmonroe-sampson@rmmslegal.com; Ulrich, Lynn MacDonald; mmatterer@morrisjames.com; mgupta@crbcp.com; provner@potteranderson.com; rkirk@bayardfirm.com; berman.richard@arentfox.com; robert.gunther@lw.com; sbalick@ashby-geddes.com; ssender@budd-larner.com; Gracey, Taras; wrakoczy@rmmslegal.com
Subject: In re: '318 Patent Litigation

Counsel:

Would you please let me know whether the defendants are available for a call at 4:00 PM EST this afternoon to discuss Plaintiffs' R. 30(b)(6) deposition notices? If not, we request that defendants propose a time tomorrow; we are available at any time tomorrow before 3:30 PM EST.

Sincerely,
Kurt G. Calia
Covington & Burling
1201 Pennsylvania Ave., N.W.
Washington, D.C. 20004-2401
202.662.5602 (v); 202.778.5602 (f)
kcalia@cov.com; www.cov.com

EXHIBIT K

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF DELAWARE

- - -

IN RE: '318 PATENT INFRINGEMENT LITIGATION, : CIVIL ACTION NO. 05-356 (KAJ) (Consolidated)

- - -

Wilmington, Delaware
Tuesday, February 7, 2006 at 3:00 o'clock, p.m.
TELEPHONE CONFERENCE

- - -

BEFORE: HONORABLE **KENT A. JORDAN**, U.S.D.C.J.

- - -

APPEARANCES:

ASHBY & GEDDES
BY: STEVEN J. BALICK, ESQ.

-and-

COVINGTON & BURLING
BY: GEORGE F. PAPPAS, ESQ., and
KURT G. CALIA, ESQ.
(Washington, District of Columbia)

-and-

JOHNSON & JOHNSON
OFFICE OF THE GENERAL COUNSEL
BY: STEVEN P. BERMAN, ESQ.
(New Brunswick, New Jersey)

Counsel for Janssen Pharmaceutica N.V., Janssen, L.P. and Synaptech Inc.

Brian P. Gaffigan
Registered Merit Reporter

party not dragging their feet. If you are both dragging your feet, who is the more culpable party. So I'm not going to try to do that.

I'm only going to tell you that the fact that we don't have a privilege log at this point, that is really not acceptable. I'm glad we've got it resolved but it doesn't reflect well on the general progress of stuff. The fact that there are documents but they're only showing now after repeated correspondence back and forth, again, it's not a good reflection and it ought to stop.

What ought to happen now is you folks ought to sit down and talk to each other, and it ought to go without saying but I'll say it. Mr. Pappas, if you've got documents that are in the same category of things that you are demanding from the other side and you are not giving them up, obviously, that wouldn't sit well with me. I can't imagine why you would want to do that. And I would anticipate you would want to say, hey, I haven't done that. But you know what? Direct that conversation at Mr. Rakoczy and you guys get it worked out. You should, both of you, be giving up the documents associated.

And I'll just address secondary considerations right now. If you've got documents that have to do with secondary considerations, make an appropriate search and give them up. If you have to do it in the context of the

protective order, obviously you can do that.

If there is something extraordinary that is going on and you are worried that, holy cow, if we give this up, we're giving away some supersensitive secret thing, if we have to put in a double/triple blind secret category for something, you guys tell me about it, but what I don't want to here is any gamesmanship about, well, we'll give it when you give it. This is not going to be Alphonse and Gaston, who goes first.

You both have an obligation to give each other documents in a timely fashion responsive to the other's request. And I'll ask you to start doing it because at least at this stage, I'm inclined to agree that it's a bit much to take four months to get document production to one another, particularly with no affirmative statements to each other about, okay, this is Stage I, I'll get you Stage II by Date X or something that would keep each other in the loop.

Okay. That is a very general but I hope that is helpful. Do you understand what I'm getting at, Mr. Rakoczy?

MR. RAKOCZY: I do, Your Honor. Understood.

THE COURT: All right. Mr. Pappas, can you live with this instruction and work this out with Mr. Rakoczy?

MR. PAPPAS: Yes, Your Honor. And we have letters out to the other defendants and we'll follow the

same procedure with the other defendants and try to bring these to a head as quickly as possible and presumably get them resolved.

THE COURT: Yes. Do any of you other defendants on the line feel like you got a dog in this fight or want to weigh in? Because I'll hear you if you have something you feel you need to put on this record.

MR. GRACEY: Your Honor, this is Taras Gracey on behalf of Barr.

You mentioned secondary considerations. You know, we, the collective defendants, have issued interrogatories to plaintiffs earlier last fall, asking for the plaintiffs' side to identify the secondary considerations they're relying on. We've also asked them to produce documents of any of those secondary considerations. Commercial success is one. For instance, we haven't seen those documents. We haven't seen an amended or updated interrogatory response that would identify the secondary considerations they're relying on.

Additionally, we mentioned in the last telephonic hearing we had about the fact that Janssen hadn't produced the new drug application or the ANDA and that still hasn't been produced. In fact, Janssen's anticipated production had been poor at the time. Synaptech has, Janssen has not, but has not produced a privilege log. So I